



**4910-EX-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2017-0026]**

**Qualification of Drivers; Exemption Applications; Vision**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemption; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 18 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2017-0026 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue, S.E., Room W64-224, Washington, DC 20590-

0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver’s medical certification.

The 18 individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

In July 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (Qualification of Drivers; Vision Waivers, 57 FR 31458, July 16, 1992). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of 49 CFR 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA-1998-3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying

conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors – such as age, sex, geographic location, mileage driven and conviction history – are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., “Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,” Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used three consecutive years of data, comparing the experiences of drivers in the first two years with their experiences in the final year.

## **II. Qualifications of Applicants**

### **Michael H. Eheler, II**

Mr. Eheler, 41, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/300. Following an examination in 2017, his optometrist stated, “With the results of the examination from our office, I believe Michael has sufficient visual abilities to perform the driving tasks required to operate a commercial vehicle.” Mr. Eheler reported that he has driven tractor-trailer combinations for six years,

accumulating 350,000 miles. He holds an operator's license from Wisconsin. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Roberto Espinosa

Mr. Espinosa, 60, has glaucoma in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/30, and in his left eye, 20/200. Following an examination in 2017, his ophthalmologist stated, "I certify, in my medical opinion, the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Espinosa reported that he has driven tractor-trailer combinations for 19 years, accumulating 2.1 million miles. He holds a Class A CDL from Florida. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Lee J. Gaffney

Mr. Gaffney, 35, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2017, his ophthalmologist stated, "Mr. Gaffney does seem to meet sufficient vision standards to perform driving tasks to operate a commercial vehicle." Mr. Gaffney reported that he has driven straight trucks for ten years, accumulating 50,000 miles. He holds an operator's license from Ohio. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Mark S. Hale

Mr. Hale, 41, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2017, his ophthalmologist stated, "In my opinion, he should be allowed to do commercial driving, since

his field of vision is quite good in both eyes.” Mr. Hale reported that he has driven straight trucks for three years, accumulating 60,000 miles. He holds an operator’s license from Alabama. His driving record for the last three years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

#### Raymundo Maldonado

Mr. Maldonado, 57, has had a macular scar in his left eye since 2013. The visual acuity in his right eye is 20/25, and in his left eye, 20/100. Following an examination in 2017, his ophthalmologist stated, “I certify Mr. Maldonado has sufficient vision to perform the driving tasks required to operate a commercial vehicle.” Mr. Maldonado reported that he has driven straight trucks for 35 years, accumulating 350,000 miles, and tractor-trailer combinations for 35 years, accumulating 12.25 million miles. He holds a Class A CDL from Texas. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

#### Mickey D. McCoy

Mr. McCoy, 46, has had a cataract in his left eye due to a traumatic incident in 2005. The visual acuity in his right eye is 20/20, and in his left eye, hand motion. Following an examination in 2017, his ophthalmologist stated, "The patient is able to recognize the colors of a traffic control device in the right eye, and in my medical opinion he has sufficient vision to perform the driving tasks required to operate a commercial vehicle and his exam results today validate that conclusion." Mr. McCoy reported that he has driven straight trucks for ten years, accumulating 125,000 miles and tractor-trailer combinations for 14 years, accumulating 389,746 miles. He holds a Class A CDL from Tennessee. His driving record for the last three

years shows no crashes and no convictions for moving violations in a CMV.

Colin D. McGregor

Mr. McGregor, 35, has complete loss of vision in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2017, his optometrist stated, "With 20/20 vision and a full field vision of 160 degrees in his right eye, I feel Colin can safely perform the tasks necessary to operate a commercial motor vehicle." Mr. McGregor reported that he has driven straight trucks for nine years, accumulating 70,200 miles. He holds a Class ABCD CDL from Wisconsin. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Thomas B. Miller

Mr. Miller, 60, has a retinal detachment in his left eye due to a traumatic incident in 1997. The visual acuity in his right eye is 20/20, and in his left eye, count fingers. Following an examination in 2017, his optometrist stated, "He appears to have adequate vision to operate a commercial vehicle." Mr. Miller reported that he has driven straight trucks for 41 years, accumulating 820,000 miles. He holds an operator's license from Virginia. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Ryan J. Plank

Mr. Plank, 42, has a retinal detachment in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, "I have never driven a commercial vehicle myself however in my opinion Mr. Plank has sufficient vision to perform the driving tasks required to operate a commercial vehicle based on his driving history and meeting the



requirements you have listed.” Mr. Plank reported that he has driven straight trucks for four years, accumulating 20,000 miles. He holds an operator’s license from Pennsylvania. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Donald J. Poague

Mr. Poague, 47, has had central scarring in his right eye since 2011. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, "Taking into consideration the fact that Mr. Poague has operated commercial vehicles without any incidences since the vascular event in his right eye, and the fact that he has good peripheral vision in both eyes, as well as uncorrected acuity of 20/20 in the left eye, it is my opinion that he can safely operate vehicles requiring a commercial drivers [sic] license." Mr. Poague reported that he has driven straight trucks for 25 years, accumulating 2 million miles, and tractor-trailer combinations for 25 years, accumulating 2 million miles. He holds a Class A CDL from Georgia. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Jose R. Ponce

Mr. Ponce, 37, has a retinal detachment in his right eye due to a traumatic incident in 2001. The visual acuity in his right eye is 20/40, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, “Thus, in my opinion, Mr. Ponce does have sufficient vision to perform the driving tasks required to operate a commercial vehicle based on these results and your exemption requirements." Mr. Ponce reported that he has driven straight trucks for six years, accumulating 150,000 miles. He holds an operator’s license from Texas.

His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Ronald F. Prezzia

Mr. Prezzia, 62, has aphakia in his right eye due to a traumatic incident in 2014. The visual acuity in his right eye is 20/70, and in his left eye, 20/40. Following an examination in 2017, his ophthalmologist stated, "It is in my medical opinion that Mr. Prezzia has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Prezzia reported that he has driven straight trucks for 35 years, accumulating 2.62 million miles. He holds a Class AM CDL from Illinois. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Jorge A. Rodriguez

Mr. Rodriguez, 65, has complete loss of vision in his right eye due to a traumatic incident in 2001. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, "I believe Mr. Rodriguez has sufficient vision in [sic] left eye to perform the driving tasks required to operate a commercial vehicle." Mr. Rodriguez reported that he has driven straight trucks for 37 years, accumulating 1.29 million miles and tractor-trailer combinations for nine years, accumulating 405,000 miles. He holds a Class AM1 CDL from California. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Jimmy W. Rowland

Mr. Rowland, 50, has retinal scarring in his right eye since 1994. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2017, his optometrist stated, "In my medical opinion, Mr. Rowland has sufficient vision to perform

the driving tasks to operate a commercial vehicle.” Mr. Rowland reported that he has driven straight trucks for 15 years, accumulating 525,000 miles. He holds a Class A CDL from Florida. His driving record for the last three years shows no crashes and two convictions for moving violations in a CMV; in both incidents he exceeded the speed limit by nine mph.

Aaron R. Rupe

Mr. Rupe, 43, has had a macular scar in his left eye since 1992. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2017, his optometrist stated, "In my medical opinion Aaron Rupe has sufficient vision to operate a commercial motor vehicle." Mr. Rupe reported that he has driven straight trucks for 17 years, accumulating 170,000 miles. He holds an operator's license from Illinois. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Charles L. Sauls

Mr. Sauls, 50, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is count fingers, and in his left eye, 20/30. Following an examination in 2017, his optometrist stated, "I, Alan F. Swinehart OD, certify in my medical opinion that Charles L. Sauls has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Sauls reported that he has driven straight trucks for 15 years, accumulating 450,000 miles, and tractor-trailer combinations for ten years, accumulating 350,000 miles. He holds a Class A CDL from Florida. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Gary M. Shoultz

Mr. Shoultz, 65, has had amblyopia in his right eye since childhood. The visual acuity

in his right eye is 20/70, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, "It is my opinion that Gary possesses sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Shoultz reported that he has driven straight trucks for four years, accumulating 164,000 miles. He holds an operator's license from Indiana. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Juan D. Zertuche, Jr.

Mr. Zertuche, 42, has had complete loss of vision in his right eye since birth. The visual acuity in his right eye is no light perception, and in his left eye, 20/25. Following an examination in 2017, his ophthalmologist stated, "In my medical opinion, vision is sufficient to perform driving tasks required to operate a commercial vehicle." Mr. Zertuche reported that he has driven straight trucks for five years, accumulating 50,000 miles, and tractor-trailer combinations for five years, accumulating 500,000 miles. He holds a Class A CDL from Texas. His driving record for the last three years shows no crashes and one conviction for a moving violation in a CMV; he exceeded the speed limit by 11 mph.

### **III. Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated in the dates section of the notice.

### **IV. Submitting Comments**

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a

mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA-2017-0026 and click the search button. When the new screen appears, click on the blue “Comment Now!” button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

## **V. Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this preamble, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA-2017-0026 and click “Search.” Next, click “Open Docket Folder” and you will find all documents and comments related to this notice.

Issued on: January 5, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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